

Introduced by Senator Campbell

February 16, 2005

An act to amend Section 21004 of, and to add Section 21014.4 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 280, as introduced, Campbell. Tax administration: Taxpayers' Privacy Bill of Rights.

The Katz-Harris Taxpayers' Bill of Rights Act governs the assessment, audit, and collection of state taxes administered by the Franchise Tax Board. Existing law requires the board to establish the position of a Taxpayers' Rights Advocate for purposes of coordinating prompt resolution of taxpayer complaints and problems. The advocate, or his or her designee, is responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees. The advocate is authorized to stay a pending action in cases where a taxpayer has, or will suffer irreparable loss as a result of the board's action. Existing law suspends applicable statutes of limitation during any stay of a pending action that is authorized by the advocate.

This bill would be known as the Taxpayer Privacy Bill of Rights Act and would prohibit the board from releasing a taxpayer's personal or financial information to the general public, unless the board shows a compelling interest for the disclosure of that information and the disclosure is first authorized by the courts. This bill would also expand the scope of the Taxpayers' Rights Advocate's authority to review and facilitate the resolution of taxpayer complaints to include complaints regarding the unauthorized release of a taxpayer's personal and financial information to the general public by employees or officers of the board. This bill would also provide for the suspension of the

accrual of interest and penalties during any stay of a pending action that is authorized by the advocate.

This bill would also specify that an officer or employee of the board may not threaten to release a taxpayer's personal or financial information for purposes of forcing a taxpayer to accept an offer to settle the taxpayer's civil tax liability dispute. This bill would also provide that the release of, or an express or implied threat to release, that information by an officer or an employee of the board for purposes of forcing a tax settlement would constitute grounds for termination or other disciplinary actions as provided by existing law. This bill would also specify conditions for the board's disclosure of a taxpayer's financial or personal information in any court or administrative proceeding where that information would otherwise be made available to the general public. This bill would also allow a taxpayer, who has sustained damages as the result of any unauthorized release of, or a threat to release, the taxpayer's personal or financial information, to pursue an action for damages against the board or its officers or employees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21004 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 21004. (a) The board shall establish the position of the
- 4 Taxpayers' Rights Advocate. The advocate, or his or her
- 5 designee, shall be responsible for coordinating *the* resolution of
- 6 *any* taxpayer complaints and problems; *with respect to the*
- 7 *Franchise Tax Board*, including—~~any~~ taxpayer complaints
- 8 regarding unsatisfactory treatment of taxpayers by board
- 9 employees. The advocate shall report directly to the executive
- 10 officer of the board.
- 11 (b) (1) *The advocate, or his or her designee, shall review any*
- 12 *taxpayer complaint regarding an unauthorized release, or the*
- 13 *threat of an unauthorized release of that taxpayer's personal or*
- 14 *financial information by an officer or employee of the board in*
- 15 *violation of Section 21014.4.*
- 16 (2) *The advocate, or his or her designee, shall verify that the*
- 17 *board takes the appropriate disciplinary action, as provided by*

existing law, against any officer or employee of the board who violates a taxpayer's privacy rights, as described in Section 21014.4.

(c) The advocate, or his or her designee, shall give the highest priority to reviewing and taking prompt and appropriate action, including ~~staying actions~~ *the stay of any action* where ~~taxpayers have a taxpayer has~~ suffered or will suffer irreparable loss as the result of board action. Applicable statutes of limitation *and the accrual of any interest and penalties* shall be tolled during the pendency of a stay. ~~Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.~~

SEC. 2. Section 21014.4 is added to the Revenue and Taxation Code, to read:

21014.4. (a) This section shall be known and may be cited as the Taxpayers' Privacy Bill of Rights.

(b) An officer or employee of the Franchise Tax Board may not release a taxpayer's personal or financial information to the general public, unless a compelling interest is shown by the Franchise Tax Board and disclosure is first authorized by a court of competent jurisdiction.

(c) Any unauthorized release of, or any threat to release a taxpayer's financial or personal information to the general public, whether express or implied, by an officer or employee of the Franchise Tax Board regardless of whether the release or threat to release was intentional or negligent, for the purpose of coercing a taxpayer into settling the taxpayer's proposed state tax liability with the Franchise Tax Board, constitutes grounds for termination of that employee or officer, or other disciplinary actions as provided by existing law.

(d) An officer or employee of the Franchise Tax Board may not present a taxpayer's personal or financial information to a court of competent jurisdiction or to an administrative agency in connection with any court or administrative proceeding in which that information would otherwise be available to the general public, unless all of the following are satisfied:

(1) The taxpayer's personal or financial information submitted by the Franchise Tax Board is limited to that information that is essential to an issue or issues in the court or administrative proceeding.

1 (2) The Franchise Tax Board has shown a compelling need for
2 the submission of the information.

3 (3) The information is filed under seal from the public.

4 (e) Any taxpayer who has sustained damages as the result of
5 any unauthorized release of, or a threat to release, a taxpayer's
6 financial or personal information to the general public, by an
7 officer or employee of the Franchise Tax Board, may pursue an
8 action for damages in a superior court against the Franchise Tax
9 Board and the officer or employee responsible for the
10 unauthorized release of, or the threat to release, the taxpayer's
11 financial or personal information.

12 SEC. 3. (a) The Legislature finds and declares that the
13 California tax system is based largely on self-assessment, and
14 that the collection by the government of accurate personal and
15 financial information about taxpayers is vital for the proper
16 assessment and collection of taxes. To promote and improve
17 taxpayer self-assessment, the government must maintain public
18 trust in the state tax system and ensure that the financial and
19 personal information supplied by the taxpayers to the Franchise
20 Tax Board is adequately protected during the process of
21 assessment and collection.

22 (b) It is the intent of the Legislature to protect taxpayers'
23 personal and financial information, and to ensure that the
24 information is released by the Franchise Tax Board to the general
25 public only when the need to release the information is essential
26 and is first authorized by the courts. It is the further intent of the
27 Legislature to provide that a taxpayer's personal and financial
28 information may only be submitted to a court of competent
29 jurisdiction or to an administrative agency in connection with a
30 court or an administrative hearing, where the court records or the
31 administrative agency's records would be otherwise available to
32 the general public, if the information is limited to that
33 information that is essential to the issues in the court or
34 administrative hearing, the Franchise Tax Board has shown a
35 compelling need for the submission of that information, and that
36 information is submitted under seal. The Legislature finds and
37 declares that these steps are necessary to protect the disclosure by
38 the Franchise Tax Board of a taxpayer's personal and financial
39 information. It is also the intent of the Legislature that a taxpayer
40 who has sustained damages as the result of an unauthorized

1 disclosure of the taxpayer's personal and financial information
2 by an officer or employee of the Franchise Tax Board may
3 pursue an action for damages in a superior court against the
4 Franchise Tax Board as well as the officer or employee
5 responsible for the disclosure.

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